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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,515	12/18/2000	Karol P. Krotki	032660-019	5151

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EXAMINER

VAN DOREN, BETH

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/740,515

Applicant(s)

KROTKI, KAROL P.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. The following is a non-final office action on the merits in response to communications received on 12/06/04. In this communications, Group I, claims 1-10, was elected. Claims 5-6 and 11-21 have been canceled. Claims 8 and 10 have been amended. Claims 1-4 and 7-10 are now pending.

Response to Restriction Requirement

2. Examiner acknowledges Applicant's Election of Group I, claims 1-10, without traverse.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-4 and 7-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The basis of this rejection is set forth in a two-prong test of (1) whether the invention is within the technological arts and (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e. the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to be considered statutory, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, the claims do not involve or use any technology to perform the method of choosing groups from the survey panel. Specifically, claim 1 recites the steps of

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identifying a group, selecting a first set of members from the group, temporarily removing the selected first set of members, and selecting additional members. None of these recited steps apply, involve, use, or advance the technological arts since all of the recited steps can be performed without the use of any technology. Dependent claims 2-4 and 7-10 further limit the recited steps above and contain the same deficiencies. Therefore, since the steps of claim 1 and its dependent claims do not apply, involve, use, or advance a technological art, it is respectfully submitted that the claimed invention is directed towards non-statutory subject matter.

The claimed invention is considered to produce a useful, concrete, and tangible result. However, since the claimed invention is not within the technological arts, as explained above, claims 1-4 and 7-10 are deemed to be directed towards non-statutory subject matter.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 4, 9, and 10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 recites the limitation “using the selection probabilities to compensate”. There is insufficient antecedent basis for this limitation in the claim because the claim contains no prior recitation of selection probabilities. For examination purposes, the limitation has been construed as --using selection probabilities to compensate--. Correction is required.

7. Claim 3 recites the limitation “the weights of the remaining members of the panel have their weights modified”. There is insufficient antecedent basis for the limitations of “the

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weights” and “the remaining members” in the claim because claim 3 and claim 1 contain no prior recitation of weights or remaining members. Further, it is unclear as to whom specifically the term “their” applies. For examination purposes, the limitation has been construed as --weights of the additional members are modified--. Correction is required.

8. Claim 4 recites the limitation “wherein the subsequent weights of the additional group members are modified”. There is insufficient antecedent basis for this limitation in the claim because claims 4 and 1 contain no prior recitation of weights or subsequent weights. For examination purposes, the limitation has been construed as --wherein subsequent weights of the additional group members are modified--. Correction is required.

9. Claim 9 recites the limitation “when the weight factor is used”. There is insufficient antecedent basis for this limitation in the claim because the claim contains no prior recitation of weight factors. Further, the claim appears to contain a typographical error. For examination purposes, the limitation has been construed as --wherein a weight factor is used--. Correction is required.

10. Claim 10 recites the limitation “wherein the weighting factors include”. There is insufficient antecedent basis for this limitation in the claim because the claim contains no prior recitation of weighting factors. For examination purposes, the limitation has been construed as --wherein weighting factors are used and include--. Correction is required.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-2, 4, and 7-9 are rejected under 35 U.S.C. 102(a) as being anticipated by

Decision Analyst, Inc. (www.decisionanalyst.com).

12. As per claim 1, Decision Analyst, Inc. teaches a method comprising:

identifying a group within an available survey panel, the group having predetermined characteristics (See page 3, section 1, page 5, section 1, page 8, section 1, and page 14, section 1, wherein a group having predetermined characteristics are identified);

selecting a first set of members from the group for a first survey (See page 3, section 1, page 7, section 1, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the members are selected);

temporarily removing the selected first set of members from the available survey panel (See at least page 7, sections 1-2, wherein the first members are removed and blocked from similar surveys for a minimum of six months); and

selecting additional members from the available survey panel for a second survey using selection probabilities to compensate for the removal of the first set of members from the available survey panel (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein additional members are drawn to complete surveys in the same product category, this drawing occurring with the first group removed from eligibility, thus making the probability of selection is higher for the available members).

13. As per claim 2, Decision Analyst, Inc. teaches wherein the selecting of additional members step includes increasing the selection probabilities of other members in the group (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the

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probability of selection is higher for the additional members since the first group was removed from eligibility).

14. As per claim 4, Decision Analyst, Inc. teaches a method wherein multiple groups are identified within the available survey panel, members of these additional groups are selected for the survey and removed from the available survey panel, and wherein subsequent weights of the additional group members are modified to compensate for the removal of the members of the group from the available survey panel (See page 3, section 1, page 5, page 7, section, page 8, section 1, and page 14, section 1, wherein multiple groups exist within the available panel and once a member takes a survey within a specific product category, the member is removed from the pool. The subsequent weight of the additional members of being selected is compensated and these members have a higher probability of selection).

15. As pre claim 7, Decision Analyst, Inc. teaches wherein an interval selection method is used (See page 7, sections 1-2, page 8, section 1, and page 14, section 1, wherein the group is selected based on intervals).

16. As per claim 8, Decision Analyst, Inc. teaches wherein a weighted interval selection method is used (See page 7, sections 1-2, page 8, section 1, and page 14, section 1, wherein the group is selected based on intervals, with members already selected removed from the group, thus making the probability of selection is higher for the available members).

17. As per claim 9, Decision Analyst, Inc. teaches wherein a weight factor is used to compensate for the removal of people who have been previously given a survey within a certain time period (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1,

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wherein the first group selected is removed from eligibility, thus giving the remaining members a higher weighting factor of being selected since the number in the pool is decreased).

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decision Analyst, Inc. (www.decisionanalyst.com).

19. As per claim 3, Decision Analyst, Inc. teaches wherein weights of the additional members are modified to compensate for other group members removed from the panel (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the first group selected is removed from eligibility, thus giving the remaining members a higher weighting factor of being selected since the number in the pool is decreased). However, Decision Analyst, Inc. does not expressly disclose using a weight factor proportionate to the number of original members in the group over the number of remaining members in the group in the available panel.

Decision Analyst, Inc. discloses sampling a survey panel to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the probability of selection is adjusted to compensate for the removal of the members. Therefore, it would have been obvious to one of

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ordinary skill in the art at the time of the invention to use a weight factor that reflects the sampling without replacement in order to increase the motivation of the panel members by not overusing said members. See at least page 7.

20. As per claim 10, Decision Analyst, Inc. teaches weighting factors used and including an original weighting factor to match the panel members to the demographics of the general population, a removal weighting factor to compensate for all of the members of the panel removed from the panel (See page 7, sections 1-2, page 8, section 1, page 9, section 1, and page 14, section 1, wherein the first group selected is removed from eligibility, thus giving the remaining members a higher weight of being selected since the number in the pool is decreased). However, Decision Analyst, Inc. does not expressly disclose a selection weighting factor.

Decision Analyst, Inc. discloses sampling a survey panel to choose survey respondents and then removing these respondents so the respondents are not selected again for at least six month (i.e. not replacing/restoring the respondents to the pool). Sampling without replacement is old and notoriously well known in statistics, wherein the selection-weighting factors of the members remaining in the pool are adjusted to increase the probability of selection. Therefore, it would have been obvious to one of ordinary skill more properly manage the selection of appropriate panel members by ensuring only members eligible are chosen. See pages 7 and 14.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Martino et al. (U.S. 6,778,807) discloses choosing participants to engage in market research questions.

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Hamlin et al. (U.S. 6,754,635) discloses generating a survey and targeting the survey towards selected panel members.

Pinsley et al. (U.S. 6,070,145) discloses a respondent selection process that discusses selection probabilities.

Kupersmit (U.S. 2002/0016731) teaches sampling data from a population of individuals.

Schafer ("To Politically Connect, and Profitably Collect) discloses survey sampling on the Internet and weighting to compensate for skewed demographics.

Rivlin ("Web Surveys, the Sequel") teaches internet surveys and, random sampling, etc.

"InterSurvey is Providing Polls on 2000 Election" (www.knowledgenetworks.com) discloses InterSurvey's use of probability sampling to gather valid data.

"A Brief Introduction to Sampling" (psychology.ucdavis.edu/raindow/fact_sample.html) discloses different types of samples and how to apply the samples to populations.

"Sampling with Replacement and sampling without Replacement" (www.ma.utexas.edu) discusses sampling without replacement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882.

The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lwd

bvd

March 4, 2005


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